

By **JUDGE EUGENE A. LUCCI**

JURY MANAGEMENT PROCEDURES

A trial is in essence a search for truth. As most cases are tried to a jury, it is the jury that determines that truth. The jury can determine the truth more readily and more accurately if the court makes it easier for the jury to process information. Therefore, from the moment jurors are summoned until they are discharged by the court, the trial must be an educational process for the jury.

Since taking the bench 17 months ago, I have used several procedures which, in my opinion, help the jury in their search for truth.

1. When my jurors are summoned, I provide each prospective juror with an extensive questionnaire to fill out and return. The questionnaire asks 71 questions, including approximately 20 questions pertaining to the juror's social preferences. Many lawyers find this information useful, but they are reluctant to ask about a juror's social preferences because they do not want to be perceived as wasting time, intruding on the juror's privacy, or asking what might seem to be irrelevant questions. In order to assist the attorneys as they prepare for *voir dire*, I make the completed juror questionnaires available to them several days before the trial.

2. On the first day of trial, prior to the commencement of the jurors' service, I show them an up-to-date jury orientation videotape. The video gives the jurors a lesson in civics, with an emphasis on the court system and juror duties.

3. Probably the most innovative procedure I employ is the "struck" method of jury selection, instead of the time-honored – and frustrating – tradition of the "strike and replace" method. In the traditional strike and replace method, eight or 12 jurors, in the order that they are

called, are seated in the jury box. Questions from the court and counsel are directed to those seated in the jury box only. The rest of the jurors are seated in the gallery section of the courtroom and participate, if at all, only by listening. When a juror is struck, the next juror seated in the gallery takes the place of the excused juror in the jury box. The attorneys then usually ask one summary question of the newly-seated juror, usually along the lines of, “Would you have answered any of the questions asked in the last one or two hours any differently?” Of course, this is a nonsensical question and rarely elicits any information to enlighten the parties regarding the juror’s prejudices, preferences, or biases. Every time another juror is replaced in the box, the same summary question is asked, and once all of the challenges have been exercised, the jury is then sworn in. However, as many as two-thirds of the members of this jury did not answer a specific question. The rest of the jurors seated in the gallery are thanked and excused, no doubt believing that they wasted an entire morning for nothing, and wondering why they were called in the first place.

The struck method reduces this frustration to a minimum. In the struck method, all of the jurors are seated in the courtroom – first in the jury box, and then in the gallery – according to their juror identification number. The attorneys have the jury questionnaires in the same order on a clipboard, together with a diagram showing where everyone is seated. The entire jury venire is then examined, not just those seated in the jury box. During the examination, no jurors are removed for cause or peremptorily. All jurors are questioned and original answers are obtained from all jurors until the court and the parties are satisfied. This process really does not take much longer than questioning the eight or 12 persons in the box. Most questions are asked to the group. The questioner focuses on an individual only if that prospective juror’s response

raises an issue. When the court and all the parties have concluded their examination, I have all of the prospective jurors step out into the hallway. Inside the courtroom, and outside the presence of the jurors, I entertain any challenges for cause or hardship, and then the attorneys alternately exercise their peremptory challenges, including one for each alternate to be seated. The selected jury then consists of the first nine or 13 of the jurors remaining, in the order that they were seated in the courtroom. I bring the venire back into the courtroom and call off the names of the selected jurors. I then thank and excuse all of the jurors who were not selected to serve.

I find that the struck method benefits everyone in the courtroom. It provides the attorneys and the court with better information because all 30 jurors in the courtroom are questioned. When the entire jury venire is examined, issues and biases come to the forefront earlier, and problems can be confronted earlier and more effectively. Since challenges are made outside the presence of the jury, the awkwardness that sometimes accompanies those challenges is eliminated. The jurors who are thanked and excused know that they participated in the jury selection process, and they do not leave wondering why they were called. Discussions are also more lively when the entire group participates. In order to help the court reporter keep track of who is speaking, I instruct everyone to say their name first before they speak. The best advantage of the struck method is that the parties know the responses and philosophical views of all of the potential jurors before excusing any of them. Therefore, under the struck method, a party not only knows who he is excusing, but also who might come on as a replacement. In contrast, under the strike and replace method, an attorney who wants to excuse a juror knows only who he is eliminating.

4. I do not select the alternate juror until just before to the jury deliberations. When the alternate juror is identified at the beginning of the case, and the other jurors look fairly healthy, there seems to be a tendency for the alternate not to pay as close attention to the evidence. This problem is alleviated when the alternate is chosen at the end of the case. I use a random procedure for selection of the alternate: I give a set of playing cards to the plaintiff's counsel, who shuffles them, and hands them to defense counsel, who then selects one, which corresponds to the number of the juror who will serve as the alternate. I do not discharge the alternate, as Criminal Rule 24 and Civil Rule 47 provide, but rather, I sequester the juror in the courthouse while the jury is deliberating. If one of the regular jurors cannot complete his or her service, I put the alternate into the jury room, and the jury then recommences its deliberations.

5. Prior to opening statements, I verbally give preliminary instructions to the jury on the substantive issues which are expected to be encountered in the case. This way, the jurors will know in advance what the substantive law says. This helps them understand the context in which the evidence will be received. I do caution the jurors at that point that it is the final charge that controls, and that if there is any discrepancy between the preliminary and the final charge, they are to follow the instructions given in the final charge.

6. I provide each juror with an official note pad and pen and allow them to take notes. It has been my experience that about one-half of the jurors take notes. Taking notes is something that most of us are accustomed to doing in an educational setting. Jurors are capable of determining what might be sufficiently important to write down, while still listening for other important information from the witness stand, especially since they have received the preliminary charge on the substantive law. There is very little difference between my taking

notes during the trial and the jury taking notes. I know that in bench trials, the lawyers prefer that I take notes rather than rely solely upon my recollection.

7. In civil cases, I allow jurors to ask questions. Before the taking of evidence, I explain the procedure for questions and the sequence of witness examination. Before the witness leaves the stand, the jurors must submit their questions in writing. The juror gives the question to the bailiff who brings it to the bench. At a sidebar, I discuss the form and substance of the question with counsel. If the question is not prohibited by the evidentiary rules, any order *in limine*, or any meritorious objection, I will ask the question in a non-leading fashion. The attorneys are then permitted to ask follow-up questions based on the juror questions. So far, I have not encountered a “stupid” question from the jury. In most cases, the attorneys wish they had asked the question first. I have found that if a juror has an unasked nagging question, it will often become the “white elephant” in the courtroom, consuming all of his attention from that point forward. Even if I decide that the question should not be asked, perhaps because it is irrelevant, the ability to suggest questions helps the jurors to clarify the trial process and makes it easier for them to focus on relevant information.

8. After closing arguments, I provide written jury instructions for each juror to follow along as I read the final charge. I also allow them to take their copies into the jury room for deliberations. Although it requires a few extra photocopies, the jurors then do not have to fight over one copy in the jury room. I have noticed that many of the jurors diagram the evidence or underline the elements that they find proven in the case on their individual copies of the instructions. In my opinion, this is clear evidence of the jurors’ conscientious efforts. When the jurors have the opportunity to read along with the instructions while I give them the final

charge, they recognize the structure of the instructions and the location of the substantive elements. This helps them organize their thinking before they begin deliberations and facilitates their understanding of the law.

9. After the service of the jurors is completed, I debrief them before they leave the courthouse, not necessarily about how or why they reached their verdict, but rather about how well the learning process met their expectations. I also provide them with written exit questionnaires for them to fill out anonymously and return. This gives the jurors an opportunity for input and provides them with a sense of ownership of the court system. It also provides the court with useful information to improve the jury trial process. I also provide them with a certificate of appreciation for their service. I believe this helps engender a more positive attitude in the community toward jury service. If jurors enjoy their service and believe they were performing a worthwhile civic duty, they will spread the word, and other potential jurors will not be quite so eager to get out of jury service.

All of these procedures are geared, in my opinion, toward seating the best jury possible. That goal requires educating the jury early and often, allowing the process to be more comprehensible to them, giving them a sense of participation in the process and that they are performing a valuable public service, and helping them arrive at the truth. After all, that is what jury trials are all about.